

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

F&J SAMAME, INC., d/b/a ALAMO
PACKING & CANDY COMPANY,

Plaintiff,

v.

ARCO IRIS ICE CREAM, ELIAS
VILLAPANDO, RAFEAL VILLAPANDO,
SALVADOR VILLAPANDO,
GUILLERMO VILLAPANDO, and RAUL
VILLAPANDO all d/b/a ARCO IRIS ICE
CREAM,

Defendants.

Civil Action No. SA-13-CV-365-XR

ORDER APPOINTING SPECIAL MASTER

Craig Ball of Austin, Texas, is hereby appointed as Special Master for Electronically Stored Information (“ESI”) pursuant to Rule 53 of the Federal Rules of Civil Procedure. Mr. Ball has filed the certification required by Rule 53(b)(3). The Special Master shall image and inspect any hard drive used by Defendants in furtherance of their business in an effort to recover any relevant email communications or other relevant ESI from Defendants’ email accounts and hard drives.

The Special Master is granted the full rights, powers and duties afforded by Rule 53(c) and may adopt such procedures as are not inconsistent with that Rule or with this or other Orders of the Court. The Special Master may by order impose upon a party any sanction other

than contempt and may recommend a contempt sanction against a party and contempt or any other sanction against a non-party.

The Special Master shall be empowered to communicate on an *ex parte* basis with a party for purposes of seeking to maintain the confidentiality of privileged, trade secret, or proprietary information or for routine scheduling and other matters which do not concern the merits of the parties' claims. The Special Master may communicate with the Court *ex parte* on all matters as to which the Special Master has been empowered to act. The Special Master shall enjoy the same protections from being compelled to give testimony and from liability for damages as those enjoyed by other federal judicial adjuncts performing similar functions.

Each side is ordered to designate a lead attorney and a lead technical individual as contacts for the Special Master. These designees shall have sufficient authority and knowledge to make commitments and carry them out to allow the Special Master to accomplish his duties. The parties are ORDERED to give the Special Master their full cooperation and to promptly provide the Special Master access to any and all facilities, files, documents, media, systems, databases and personnel (including technical staff and vendors) which the Special Master deems necessary to complete his duties.

Disclosure of privileged or protected information connected with the litigation to the Special Master shall not be a waiver of privilege or a right of protection in this cause and is also not a waiver in any other Federal or State proceeding; accordingly, a claim of privilege or protection may not be raised as a basis to resist such disclosure. In the event that the Special Master is able to recover discoverable documents, he is to turn them over to Counsel for

Defendants to create a privilege log in order to ensure that irrelevant or privileged information contained on Defendants' hard drives are not disclosed .

The Special Master's compensation, as well as reasonable and necessary expenses, will be paid by Defendants. Mr. Ball shall be compensated at the rate of \$250 per hour, including time spent in transit or otherwise in connection with this appointment, provided however that travel time will be paid at one-half (50%) of the usual and customary rate unless substantive work, research, or discussions in support of the engagement are performed while traveling, in which case such activities will be paid at the usual and customary rate. The Special Master shall submit to both parties invoices for services performed according to his normal billing cycle and Defendants shall pay such invoices within thirty (30) days of receipt.

In making this appointment, the Court has determined that the matters within the purview of the Special Master necessitate highly specialized technical knowledge and cannot be effectively and timely addressed by an available district judge or magistrate judge of the district.

SIGNED this 27th day of May, 2014.

A handwritten signature in black ink, appearing to read 'Xavier Rodriguez', with a stylized flourish at the end.

XAVIER RODRIGUEZ
UNITED STATES DISTRICT JUDGE